



Guideline

Sales Tax Licensed Motor Vehicle Dealers

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Motor Vehicle Excise Tax

Motor Vehicles Defined

The gross receipts from sales of motor vehicles required to be titled under North Dakota Century Code ch. 39-05 are exempt from sales tax. Instead, motor vehicle excise tax is imposed on the purchase price of any motor vehicle purchased or acquired in or outside of the state of North Dakota for use on the highways and streets of this state and required to be registered under the laws of this state.

The definition of a motor vehicle includes automobiles, trucks, trailers, semitrailers, motorcycles, all-terrain vehicles, snowmobiles and travel trailers for which a certificate of title is required.

The collection of motor vehicle excise tax is carried out by the North Dakota Department of Transportation's Motor Vehicle Section, who acts as an agent for the State Tax Commissioner.

Sales of Motor Vehicles

Sales of Vehicles By Licensed Dealers

The purchaser of a motor vehicle is responsible for payment of motor vehicle excise tax to the Motor Vehicle Division, but many new and used motor vehicle dealers collect the tax from their customers and remit it to the Motor Vehicle Division as a service to their customers, unless the customer is expressly exempt from the tax.

Sales to Federal or State Government and Political Subdivisions

The sale or lease of a motor vehicle to the federal or state government or political subdivision is not subject to motor vehicle excise tax when the vehicle is registered with the Motor Vehicle Division.

Sales to Enrolled Members of Indian Reservation

The sale of a motor vehicle to a Native American is not subject to motor vehicle excise tax when the purchase occurs on the Indian reservation or when the vehicle is **delivered** to the Indian reservation on which the Native American is an enrolled member. If the dealer delivers the motor vehicle to an Indian reservation on which the purchaser is an enrolled member, the purchase is exempt from motor vehicle excise tax provided a completed *Tribal Claim for Tax Exemption* (SFN 18085) completed by the seller and purchaser accompanies the application for title.

Sales to a Physically Disabled Person

The sale or lease of a motor vehicle to a physically disabled, licensed driver who is restricted to operating a motor vehicle equipped with special controls to compensate for the disability is exempt from the motor vehicle excise tax. To claim this exemption, the application for title must be accompanied by a statement from the North Dakota Department of Transportation regarding the need for a restricted driver's license. The driver is allowed this exemption for only **one** vehicle at any one time.

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Sales of Motor Vehicle for Promotional Purposes

If a motor vehicle dealer sells a vehicle to a charitable organization to be awarded as a prize in a promotional giveaway, the charitable organization is not subject to motor vehicle excise tax provided the motor vehicle will be subject to motor vehicle excise tax by the eventual prize winner.

Vehicles purchased by a business or group, other than a charitable organization, must be registered and motor vehicle excise taxes paid on the purchase price of the vehicle. The eventual prize winner also would have to report and pay motor vehicle excise tax on the fair market value of the vehicle when taking possession of the prize.

Nonfranchised Motor Vehicle Sales

A licensed motor vehicle dealer must pay motor vehicle excise tax on new motor vehicles entering the dealer's resale inventory if the dealer does not hold a new motor vehicle dealer's license that would entitle the dealer to deal in new motor vehicles as provided by a franchise agreement with a manufacturer or distributor. A used car motor vehicle dealer's license allows the dealer to sell only used motor vehicles.

For example, a customer wants to lease a new motor vehicle for which the motor vehicle dealer does not have a franchise. To accommodate the customer, the nonfranchised motor vehicle dealer obtains the desired vehicle from a franchised motor vehicle dealer. The nonfranchised dealer leases the vehicle to a customer. The licensed motor vehicle dealer is responsible for motor vehicle excise tax on the nonfranchised vehicle.

Service Vehicles

All service vehicles, including parts trucks, wreckers, courtesy cars and vans and similar vehicles owned by the licensed dealer must be titled and licensed and the motor vehicle excise tax must be paid when the unit is put into service. These vehicles are not to be titled for resale, nor should they carry dealer plates.

Discounts and Exemptions Allowed***Customer Trade-In***

A motor vehicle purchased for use upon the streets and highways of this state is subject to the motor vehicle excise tax on the purchase price of the motor vehicle less any trade-in allowance or credit. When a motor vehicle or other tangible personal property that will be subject to a sales or use tax is used as a trade on the subsequent purchase of a motor vehicle, the credit or trade-in value allowed by the dealer selling the motor vehicle will be deducted from the total selling price to determine the taxable price.

When a motor vehicle dealer pays cash to a customer for a motor vehicle, the cash may not be used as a trade-in credit on a subsequent motor vehicle purchase. We are unable to allow a cash payment by a dealer as a trade-in due to the restrictive language of the motor vehicle excise tax statute. An exception to this policy is allowed if the motor vehicle dealer makes a cash payment to a lien holder of the trade-in vehicle.

Statement of Loss

The motor vehicle excise tax law provides that insurance proceeds from stolen or totally destroyed motor vehicles may be used as a trade-in credit against the taxable purchase price of the replacement motor vehicle. To receive this trade-in credit, the purchaser must supply the notarized **statement of loss** received from the insurance company to the seller of the replacement motor vehicle or to the Motor Vehicle Division when registering the replacement motor vehicle.

The statement of loss is available for use in more than **one** purchase transaction and must be used within three years from the date of issuance to be valid. If the purchase of the replacement vehicle is less than the statement of loss, the excess loss may be used on a second transaction.

Canceled Sales

The motor vehicle excise tax law provides a refund of tax to the owner of a defective passenger motor vehicle returned to the manufacturer (as defined under N.D.C.C. § 57-40.3-01) or when the purchase of a motor vehicle is canceled by the dealer. To receive a refund of motor vehicle excise tax, the purchaser must present proof satisfactory to the Motor Vehicle Division. In the event of a canceled sale by a licensed dealer, the purchaser is required to provide proof that they have received a refund of **all** monies initially paid to the dealer. Proof may include a copy of the canceled purchase agreement, tax receipts and other documentation that the refund is warranted. (There is a three-year statute of limitations on motor vehicle excise tax refunds.)

Extended Warranty, Maintenance or Service Contracts

When computing the motor vehicle excise tax on the sale of a motor vehicle, the charge for an extended warranty, maintenance or service contract should not be included in the purchase price on which the North Dakota motor vehicle excise tax will apply.

Federal Excise Tax

When computing the motor vehicle excise tax on the sale of heavy-duty trucks, the Federal Excise Tax should not be included in the purchase price on which the North Dakota motor vehicle excise tax will apply.

Dealer Trade-In

When a licensed dealer removes a motor vehicle from its resale inventory and uses this vehicle as a trade-in to purchase another motor vehicle, a trade-in credit would generally apply when the replacement vehicle is placed into the dealer's resale inventory or sold immediately. If the motor vehicle that is being purchased by the dealer is not placed into the dealer's resale inventory or immediately sold, the dealer will be responsible for the payment of the motor vehicle excise tax on the vehicle removed from inventory because the replacement vehicle is considered to be for the dealer's own use or benefit.

Not Allowable as Discount

Rebates

A manufacturer's rebate is **not** deducted from the purchase price when calculating the motor vehicle excise tax. Instead, the price paid to the dealer (less trade-in, if any) is the basis for determining motor vehicle excise tax and no credit or refund of the tax is allowed because the manufacturer's rebate is assigned to the dealer. The rebate is a reimbursement from the manufacturer to the customer, and if the customer assigns the rebate to the dealer, the rebate is not to be considered as a trade-in or other credit to reduce the tax base of the motor vehicle.

Lease of Motor Vehicle

The North Dakota motor vehicle excise tax law requires the payment of the 5 percent tax by a leasing company or licensed motor vehicle dealer that is titling motor vehicles intended for leases having a term of **less** than one year.

Motor vehicles placed into lease service for periods of one year or more are subject to the 5 percent motor vehicle excise tax at the time the motor vehicles are titled for use in this state based on the total consideration of the lease.

New Motor Vehicle Leases

A licensed motor vehicle dealer is permitted by law to purchase a new motor vehicle exempt from tax for which they hold a franchise. A motor vehicle dealer that does not have a franchise in effect with a manufacturer will continue to be subject to the motor vehicle excise tax on the purchase price of any new motor vehicle not previously subject to tax as provided by N.D.C.C. chs. 39-22 and 57-40.3. All motor vehicle dealers leasing qualifying motor vehicles are also responsible for the payment of the 5 percent motor vehicle excise tax based on the total consideration due under qualifying lease agreements.

Please reference the Tax Guideline for *Lease or Rental of Motor Vehicle* for additional information.

Rental of Motor Vehicle

The North Dakota 5 percent sales tax and 3 percent rental surcharge are imposed on rentals of motor vehicle for periods ***less than 30 days*** in this state. The 5 percent sales tax and the 3 percent rental surcharge are separate charges, with each applying to the rental charges.

5 Percent Sales Tax

The North Dakota 5 percent sales tax applies on the rental charges of ***any*** licensed motor vehicle, including every trailer or semi trailer as defined in N.D.C.C. § 57-55-10(2), for periods less than 30 days in this state. The sales tax is computed and collected on the total rental charge, excluding taxes, fuel collections, collision damage waiver charges, supplemental liability protection, personal accident insurance, personal effects coverage and airport authority fees. The 5 percent sales tax is collected at the time you collect payment for the rental of the vehicle, and must be listed separately on the invoice. (City and County sales taxes do not apply to the motor vehicle rental charges.)

Vehicle rental companies must hold a valid North Dakota Sales and Use Tax Permit and file Sales Tax returns. Rental charges are to be reported on the Sales Tax returns and the 5 percent must be remitted with the return on or before the return's due date.

3 Percent Rental Surcharge

The 3 percent rental surcharge must be collected on the rental charges of any motor vehicle for periods of less than 30 days in this state provided the motor vehicle has a ***gross vehicle weight*** of ten thousand pounds [4535.92 kilograms] or less and is required to be titled.

The 3 percent rental surcharge is computed and collected on the total rental charge, excluding taxes, fuel collections, collision damage waiver charges, supplemental liability protection, personal accident insurance, personal effects coverage and airport authority fees

The rental surcharge is collected at the time payment is collected for the rental of the motor vehicle. A charge for the 3 percent rental surcharge must be listed separately on the invoice. The surcharge collected during the prior year is to be reported on an annual ***special surcharge return*** to be filed with the State Tax Commissioner on or before February 15th of each year.

Rental or Loaner Vehicles

If a licensed dealer or repair business is charging a customer for use of a motor vehicle, the 5 percent sales tax and 3 percent rental surcharge must be collected from the customer. If no charge is being made to the customer, no tax or surcharge is due.

If a third party is being billed for the vehicle rental, such as a vehicle being provided under an extended warranty or service contract, the 5 percent sales tax and rental surcharge must be included in the billing to the third party.

Sales tax and the rental surcharge will not apply on charges for a vehicle rental being provided under the manufacturer's original warranty.

Please reference the Tax Guideline for *Lease or Rental of Motor Vehicle* for additional information.

Sales & Use Tax

General Replacement or Repair Work

When a customer is charged for replacement or repair parts not covered by a manufacturer's or retailer's warranty, extended warranty, maintenance or service contract, all separately stated charges made to the customer for the replacement or repair parts are subject to sales tax. Separately stated charges for repair labor associated with the replacement or repair are not subject to sales tax.

All replacement or repair parts sold for resale or used to repair an automobile held for resale are not subject to sales or use tax provided a completed *Certificate of Resale* form is obtained from the dealer and maintained on file by the repair person.

All persons performing repair work on motor vehicles should bill customers in such a manner as to show separate charges for materials or parts sold and labor or services performed. Sales tax should be added to the selling price of all parts and materials listed.

Tire Sales - Tire Repair and Studding

Sales of tires, including tire retreading, are subject to sales tax. Sales tax is computed on the price after adding federal excise tax and after deducting a trade-in or discount.

Tire retreaders engaged in the business of retreading tires for a consideration are deemed to be producing tangible personal property for sale. The total gross receipts from the sale of retread tires, less any trade-in are subject to sales tax. When the customer furnishes the tire casing, the entire charge to the customer for retreading such tires also is subject to sales tax.

Repairing or studding tires or tubes are not subject to sales tax, provided these charges are separately stated. Supplies and materials purchased to perform such services are taxable to the repair person, unless the tire repair materials are itemized on the billing to the customer. If itemized to the customer, sales tax would apply to the material charges.

Manufacturer's or Retailer's Warranty Contract

When the price of the manufacturer's or retailer's warranty contract is ***included*** as part of the sales of the motor vehicle, all parts replaced by the manufacturer or retailer under the warranty contract are not subject to sales or use tax.

Extended Warranty, Maintenance or Service Contract

When an extended warranty, maintenance or service contract is ***sold*** to a customer in conjunction with the sale of a motor vehicle, no sales or use tax will apply to the separately stated charge for the extended warranty, maintenance or service contract. The seller of the extended warranty, maintenance or service contract is responsible for the

payment of sales or use tax upon the cost of the parts used to repair the motor vehicle. In those instances where an extended warranty, maintenance or insurance company is billed by the repairer for the repairs completed under the extended warranty, maintenance or service contract, the repairer does have the option of billing sales tax on the separately stated charges for the repair parts like other repair billings. If the repairer does not itemize the repair parts from the repair labor, the repairer is responsible for the payment of sales or use tax based upon the cost of the repair parts.

Any charges passed onto the customer for service or parts are subject to sales tax only to the extent such charges are actually for parts and not for service or labor charges. When a charge is made for a **deductible**, which the customer is obligated to pay under the extended warranty, maintenance or service contract, the deductible is first applied to the nontaxable service or labor charges. Should the deductible amount paid by the customer exceed the nontaxable service or labor charges, the remaining amount allocable to parts is subject to sales tax.

Goodwill, Policy Work or Shop Comeback

A dealer providing free parts or services or both to a customer under an implied warranty in order to maintain good customer relations, although not required to do so under a sales agreement, warranty, maintenance agreement or an insurance plan, may purchase the parts without sales or use tax as parts for resale.

Sales to Licensed Dealers

Motor vehicle dealers are major purchasers of auto parts, shop equipment and supplies. While many of their purchases are for resale, some are for final use and are subject to sales tax. Shown below are lists of items generally purchased for resale and items generally purchased for final use.

Resale - Not Taxable

| | |
|------------------------------|--|
| Repair parts | Seat covers and cushions |
| Automobile bulbs | Valve stems and cores |
| Headlamp units | Wiper blades and arms |
| Tires-tubes | Mufflers and clamps |
| Batteries | Tailpipes |
| Battery cable | Tar remover |
| Oil | Windshield washer and antifreeze |
| Antifreeze | Tire boots (for resale) |
| Oil additives | Tubeless tire repair material (for resale) |
| Gas additives | Auto wax and cleaner |
| Motor tonics | Chamois (for resale) |
| Radiator flush and stop leak | Bug sponges (for resale) |
| Tube repair kits | Brooms and mops (for resale) |
| Windshield scrapers | Hand tools (for resale) |
| Chains | Hand gun grease cartridges |
| Bug screens | Wheel bearing grease (for resale) |

Final Use - Taxable

| | |
|----------------------------------|-------------------------------|
| Hoists | Office equipment and supplies |
| Floor jacks | Bathroom soap |
| Engine analyzers | Toilet tissue |
| Timing lights | Paper towels |
| Tire change and repair equipment | Cleaning rags |
| Wheel balancing equipment | Brooms and mops (for use) |
| Car wash equipment | Bug sponges (for use) |
| Car wash soap | Chamois (for use) |

Final Use - Taxable (Con't.)

| | |
|---------------------------------|--|
| Gas pumps, hoses, nozzles | Tire boots (for use) |
| Air equipment and hoses | Tubeless tire repair materials (for use) |
| Greasing equipment and grease | Handtools (for use) |
| Battery charging equipment | Window cleaner |
| Radiator testing equipment | Tire gauges |
| Vacuum cleaners | Light bulbs |
| Floor oil and grease absorbents | Friction and electric tape |
| Hand cleaner | Wheel bearing grease (for use) |

Items taken out of inventory for personal or business use are subject to North Dakota use tax. Enter the cost of these items on the *Items Subject to Use Tax* line of the sales and use return. **Examples:** parts and tires removed from inventory for personal or company owned vehicles or tools removed from inventory for store or personal use are subject to use tax.

Sales to Body Shops

Like the businesses listed above, body shops also make some purchases for resale while other purchases are for their own use. Shown below are items generally purchased for final use.

| Resale - Not Taxable | | Final Use - Taxable |
|-----------------------------|----------------------|----------------------------|
| Radiators | Shock absorbers | Masking tape |
| Grilles | Hub caps | Masking paper |
| Bumpers | Wheels | Sand paper |
| Brackets | Tires | Sanding discs |
| Fenders | Door handles | Sanders |
| Hoods | Floor mats | Paint sprayers |
| Trunk lids | Cigarette lighters | Hand tools |
| Doors | Paint | Equipment parts |
| Trim | Thinner | Office supplies |
| Windshields | Body filler or putty | |
| Window glass | Body lead | |
| Chassis parts | Accessories | |
| Engine parts | Sealer and primer | |
| Head lamps | Solder | |
| Bulbs | | |

Shop Supplies Charge

Many dealers, repair shops and body shops attempt to recover the cost of items used or consumed by their shops or service centers during the completion of repair or body work by billing the customer for a charge identified as *shop materials* or *shop supplies*. This charge is generally a percentage of the labor charge, and as such, is considered a charge for service and is not subject to the sales tax.

Purchases by dealers, repair shops and body shops of materials and supplies for their own use or consumption (shop supplies) in the completion of repairs, body work or other services are subject to sales or use tax at the time of purchase. These purchases may include, but are not limited to: hand tools, masking tape, masking paper, sandpaper, paint sprayers, engine cleaners and cleaning materials (cleaning cloths or rags, hand cleaner, floor sweep). If sales tax is not paid to the supplier or vendor at the time of purchase by the dealer, repair shop or body shop, the untaxed purchases should be reported using the *Items Subject to Use Tax* line of the sales and use tax return.

Candy, Chewing Gum and Soft Drinks - Vending Machines

Sales of all candy, chewing gum and soft drinks are subject to sales tax. In addition, all items sold through a coin-operated vending machine are subject to sales tax. Soft drinks include various fruit drinks, if the amount of pure fruit juice in the fruit drinks does not equal or exceed 50 percent of the product.

Promotional and Gift Items

Purchases by a dealer to be given away for advertising or promotional purposes are taxable. However, if the promotional items are provided to the customer as a condition of a sale, the purchase of the promotional items by the seller would constitute a purchase for resale and the cost of the promotional items are considered to be factored into the selling price.

For Example: ABC Motor Company provides ***caps*** and ***calendars*** to their customers at no charge. ABC Motor Company is responsible for the payment of sales or use tax on the purchase of the caps and calendars being given away as advertising or promotional items.

For Example: ABC Motor Company agrees to include a 9" Black & White Television with each motor vehicle sold. It is assumed that the cost of the television has been factored into the selling price of the motor vehicle. Therefore, ABC Motor Company would not pay sales or use tax on the purchase of the television sets. The purchase of the television sets by ABC Motor Company would be for resale.